

Examiner's decision is therefore contrary to the decision of the PCT searcher and examiner.

The Examiner appears to have dismissed the generic claims of this application on the basis that "a method of transforming an organism with DNA encoding a GPAT was known, as taught by applicant in the specification at page 2 where it is disclosed that rapeseed plants were transformed with a GPAT coding sequence, wherein increasing triacylglyceride content in the organism would be inherent in a method comprising the same components and the same steps." However, this overlooks the fact that all of the claims of this application were considered novel and unobvious over the prior art by the International examiner (except that claim 43 was considered to lack an inventive step). This is evidence to show that the statement made by the Examiner is incorrect and that, consequently, all of the claims of this application are so linked as to form a single general inventive concept, namely that they all relate to expressing a DNA encoding, in an organism, a protein having GPAT activity. Moreover, Murata et al. and Nishizawa mentioned on page 2 of the specification relate to expressing a plastidial GPAT in tobacco for improving chilling tolerance and Wolter et al. relates to the expression of bacterial GPAT in Arabidopsis for reducing chilling tolerance. These references make no mention of compositional changes in anything but membrane lipids of plastids. This has nothing to do with enhancing triglycerides (seed storage lipids) and thus is not a disclosure of a method for increasing the triacylglyceride content of an organism. The Examiner has stated that the expression of GPAT would inevitably result in increasing triacylglyceride if the same components and steps are employed, but this is supposition on the part of the Examiner based on assumptions about the reference that may or may not be sound. There is no basis for considering altered triacylglycerides as inherent in a study in which membrane lipids are targeted.

There is consequently no clear basis for the dismissal of the patentability of the generic claims on this basis.

The Examiner's characterization of the claims of Groups I and II also does not seem to be correct and caused some consternation with the applicants. In particular, the characterization of Group II as "drawn to a method of increasing the triglyceride content of a plant by transforming yeast with DNA encoding GPAT" seems confusing. This

statement only makes sense if the Examiner considers yeast to be a plant (which by some definitions it may be). If yeast is considered to be plant, the basis for the restriction is undermined in that one claim group relates to the treatment of a plant and the other relates to the treatment of a subspecies of plants.

The Examiner also required the Applicant to select a single nucleotide sequence and corresponding amino acid sequence for the elected group. Applicant hereby provisionally selects SEQ ID NO:2 (DNA encoding safflower plastidial GPAT minus the transit peptide) and SEQ ID NO:7 (the protein encoded by SEQ ID NO:2). Again, this selection is made with traverse. The Examiner pointed out that this is not an election of species, but the Examiner seems to be imposing a restriction requirement in addition to the one discussed above (based on claim groupings based on plants and yeast). However, this is not quite clear and no claim groups have been identified corresponding to such a restriction. Also, the basis of this requirement is said to be 35 USC 121 and 37 CFR 1.141 et seq., but these sections relate to national applications rather than to national phase applications such as the present application. Withdrawal of this requirement is therefore requested.

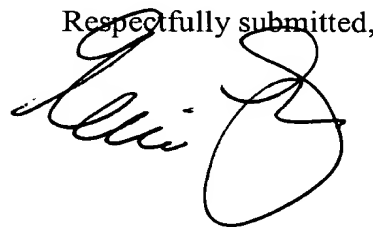
2. The Examiner stated that the inventions of Groups I and II and methods comprising SEQ ID NOs:1-10 do not relate to a single general inventive concept under PCT Rule 13.1. This issue has been addressed above and is believed to be incorrect for the reasons given. Nevertheless the required provisional election has been made as indicated above.

For the reasons given, favorable reconsideration of this application is requested.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edwin J. Gale', written over the typed name and 'Respectfully submitted,'.